

Message Text

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SUBJ: FLORENCE AGREEMENT PROTOCOL ANNEX E; ARTICLES FOR
THE HANDICAPPED

REF: A) STATE 187912; B) CANBERRA 6529

1. FURTHER TO OUR REPORT REFTEL, THE BY-LAW PLANNING AND SERVICES DIVISION OF THE DEPARTMENT OF BUSINESS AND CONSUMER AFFAIRS (DBCA) HAS PROVIDED SUPPLEMENTAL INFORMATION RESPONDING TO THE QUESTIONS RAISED IN DEPTTEL IN REFERENCE. THESE DATA AS FOLLOWS.

2. SCHEDULE 2 TO THE AUSTRALIAN CUSTOMS TARIFF ACT CONTAINS TWO PROVISIONS UNDER WHICH IMPORTED GOODS, TO BE USED BY DISABLED PERSONS, MAY BE ADMITTED DUTY FREE UNDER BY-LAW.

3. THE FIRST OF THESE IS ITEM 18 WHICH RELATES TO GOODS USED BY BLIND, DEAF OR DUMB PERSONS. IN THIS CASE, IT MUST BE ESTABLISHED THAT THE GOODS HAVE BEEN SPECIALLY DESIGNED FOR THE USE OF SUCH PERSONS.

4. THE WORDS "SPECIALLY DESIGNED" HAVE NOT BEEN DEFINED. THUS, EACH CASE IS CONSIDERED ON ITS OWN MERITS. BY-LAWS THAT ARE AT PRESENT IN FORCE UNDER THIS PROVISION ARE UNCLASSIFIED

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HIGHLIGHTED IN THE CONSOLIDATED CUSTOMS BY-LAW PUBLICATIONS (REFERENCES BEING FORWARDED BY POUCH).

5. THE WORDS "PUBLIC INSTITUTIONS" APPEARING IN BY-LAWS HAVE NOT BEEN DEFINED, PROBABLY FOR THE REASON THAT IT SEEMS LITTLE DIFFICULTY HAS BEEN ENCOUNTERED IN IDENTIFYING SUCH INSTITUTIONS IN AUSTRALIA.

6. THE SECOND BY-LAW PROVISION IS ITEM 19, WHICH ALLOWS FOR THE GRANT OF DUTY FREE ENTRY OF GOODS IF IT IS ESTABLISHED THAT SUITABLY EQUIVALENT GOODS ARE NOT REASONABLY AVAILABLE FROM AUSTRALIAN PRODUCTION OR MANUFACTURE. THIS PROVISION ENABLES BY-LAWS TO BE MADE TO COVER IMPORTED GOODS FOR USE BY DISABLED PERSONS NO MATTER WHAT THE CAUSE OF THEIR DISABILITY. THIS CONCESSION IS NOT SUBJECT TO THE "SPECIALLY DESIGNED" CRITERION.

7. CONCESSIONS UNDER THIS PROVISION APPEAR THROUGHOUT THE ABOVEMENTIONED BY-LAW REFERENCES. UNFORTUNATELY, AS DUTY FREE ENTRY IS MADE UNDER THE GENERAL BY-LAW PROVISION, THEY ARE NOT LINKED TO USAGE BY HANDICAPPED PERSONS. THEY ARE, THEREFORE, NOT READILY IDENTIFIABLE.

8. IN THE ADMINISTRATION OF ITEM 19, THE QUESTION OF WHETHER OR NOT LOCALLY PRODUCED GOODS ARE "SUITABLE EQUIVALENTS" INVOLVES ASSESSMENTS OF THE EXTENT OF COMPETITION OFFERED BY THE IMPORTED GOODS.

9. THEREFORE, THE ESSENTIAL TEST OF "SUITABLE EQUIVALENCE" IS WHETHER OR NOT THE AUSTRALIAN MADE GOODS CAN BE USED FOR THE REQUIRED END-PURPOSE. THIS MEANS THAT THE LOCALLY PRODUCED GOODS NEED NOT NECESSARILY BE IDENTICAL TO THE IMPORTED GOODS EITHER IN TERMS OF DESIGN, COMPOSITION, QUALITY

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AND THE LIKE. ALSO, THE FACT THAT THE IMPORTED GOODS MAY BE MORE ECONOMICAL OR CONVENIENT TO USE DOES NOT, OF ITSELF, NECESSARILY CONSTITUTE A BASIS FOR WAIVING DUTIES.

10. THE DEPARTMENT OF FOREIGN AFFAIRS (DFA) HAS ADVISED THE EMBASSY THAT THE GOA HAS NOT ACCEDED TO THE FLORENCE AGREEMENT AND THAT IT IS NOT LIKELY THAT IT WILL DO SO IN THE FORESEEABLE FUTURE. APART FROM THE SUBSTANTIAL INTERAGENCY DISAGREEMENT ON ASPECTS OF THE AGREEMENT AND THE "NARIOBI PROTOCOL", DFA SUGGESTS THAT AUSTRALIA IS HARDLY LIKELY TO BE GRANTED A SAFEGUARD CLAUSE BROAD ENOUGH TO COVER THE RESERVATIONS OF TREASURY ON ASPECTS OF EXCHANGE CONTROL AND TAXATION, THE DEPARTMENTS OF BUSINESS AND CONSUMER AFFAIRS AND OF COMMERCE AND INDUSTRY ON PROTECTION OF AUSTRALIAN CONSUMERS AND OF LOCAL INDUSTRY, TO SAY NOTHING OF THE VIEWS OF THE ATTORNEY GENERAL ON THE DEROGATION OF AUSTRALIAN LAW AS REGARDS THE AUSTRALIAN CUSTOMS TARIFF ACT SHOULD THE GOA CCEDE. THUS, DBCA WILL CONTINUE TO TREAT THE ENTRY OF DUTY-FREE ITEMS WITHIN THE MEANING OF THE "NAIROBI PROTOCOL" UNDER THE PROVISIONS OF LAW DEFINED ABOVE.

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